

REMARKS

Claims 1-63 are pending in this application. In the Office Action, claims 1-7, 9-16, 18-24, and 26-63 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by U.S. Patent No. 6,264,639 (Sauer); and claims 8, 17, and 25 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sauer.

By this amendment, Applicants have amended claims 1, 3-4, 10-11, 14, 22, 29-30, 35, 43, 53, 56, and 60. Claims 3 and 4 have been amended to include a missing period at the end of the claim, claims 10 and 11 have been amended to replace the less formal dash with the word “to,” and claim 35 has been amended to correct the tense of the verb. Reconsideration in view of the following remarks is respectfully requested.

I. REJECTION OF CLAIMS 1-7, 9-16, 18-24, AND 26-63 UNDER 35 U.S.C. § 102(a)

In the Office Action, claims 1-7, 9-16, 18-24, and 26-63 are rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by Sauer. In a recent non-precedential opinion, the Court of Appeals for the Federal Circuit explained that “[a] determination that a claim is anticipated under 35 U.S.C. § 102 involves two analytical steps.” *In re Simpson*, 2003 U.S. App. LEXIS 7278, *7 (Fed. Cir. 2003). The claim language first must be interpreted, and then each element of the claim is compared to a prior art reference. *Id.* Because the Office has erred in both analytical steps, Applicants respectfully request withdrawal of this rejection.

A. INTERPRETATION OF THE CLAIMS

With respect to independent claims 1, 29, 43, 53, and 56, Applicants respectfully submit that the Office's interpretation of a "middle back area" and/or "a middle chest area" as a "horizontal center" of a user is not supported by the specification or the common meaning of the terms. During the telephone interview, the Examiner indicated that the claim language "a middle back area" is interpreted as a horizontal center of the back of a user. Further, the Examiner indicated that the claim language "a middle chest area" is interpreted as a horizontal center of the front of a user. Applicant respectfully traverses this rejection, and requests withdrawal of this interpretation in view of the following remarks.

"When examining claims for patentability, claims are interpreted as broadly as is reasonable and consistent with the specification." *In re Thrift*, 298 F.3d 1357, 63 USPQ2d 2002 (Fed. Cir. 2002). When the specification does not define a phrase, the phrase is interpreted according to its ordinary meaning. *Id.* In the current case, neither the specification nor the ordinary meaning of the phrases "middle back area" and "middle chest area" support an interpretation of the "horizontal center" of a user.

The invention provides a back guard that "extends... to the middle back area of a user... [to] prevent[] leakage of waste products from the article to the back of the user." (page 2, lines 17-20). As discussed in the specification, current incontinence articles frequently leak due to the movement and/or orientation of the user. The claimed invention solves this problem by providing a back guard that extends further up the back of the user. In the specification, Fig. 1 shows an incontinence article 10 that includes a front portion 12 a crotch portion 14, a rear portion 16, and a back guard 18. As described in the specification and commonly understood in

the art, when worn by a user, front portion 12 contacts a front of the user, crotch portion 14 contacts a crotch of the user, and rear portion 16 contacts a rear of the user. The specification states that “[B]ack guard 18 extends from rear portion 16 to a middle back area of a user... back guard can be made any length capable of extending to a middle back area of an intended user.” (page 8, line 22 to page 9, line 1). The direction of the back guard by which length is measured is indicated in Fig. 1 by reference number 30. Further, the specification states that the back guard is “intended to reach/extend to approximately the middle back area of the user without having to adjust (e.g., lower) the front portion of the article.” (page 10, lines 1-4). As a result, when discussing the back guard as having a “length” and “extending” from the rear portion of the article, the application is clearly referring to a vertical extension along the back of a user.

To determine the extent to which the back guard extends up a user’s back, the common meaning of the phrase “middle back” is used. Applicants have included several samples as Exhibit A that discuss the back in general, and the thoracic spine region of the back as comprising the “middle back.” The interpretation of middle back as a “vertical region” of the back is also supported by Figs. 12 and 13, in which the respective back guards 18, 210 are depicted as having a length 304 sufficient to extend into a middle back area 302 of the user 300. Middle back area 302 clearly denotes an area of the user’s back well above the waist. As a result, when the claim refers to “a middle back area,” it is clearly referring to a vertical middle of the back rather than a horizontal middle of the back. Similarly, the term “middle chest area” is shown in Fig. 13 by reference 306, which is clearly intended to depict a vertical location on a user’s body rather than the horizontal orientation as interpreted by the Office. In light of the meaning of “middle back,” and the discussion in the specification, Applicants respectfully submit

that “middle chest” also clearly denotes a vertical location on a user’s body. As a result, Applicants respectfully submit that the claimed limitations cannot be reasonably interpreted to mean a horizontal point on a back or front of a user.

B. COMPARISON WITH SAUER

Turning to Sauer, Applicants respectfully submit that Sauer fails to disclose the claimed back guard. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987); see MPEP § 2131, p. 2100-70. In Sauer, the Office cites rear waist section 14 as allegedly disclosing the claimed rear portion, front waist section 12 as allegedly disclosing the claimed front portion, and central zone 62 and/or side zones 64, 66 as allegedly disclosing the claimed back guard. Sauer provides a waist flap that fastens about the waist of a wearer. The waist flap includes a central zone that conforms to the small of the wearer’s back. (Abstract). The central zone includes a “free edge 78 [that] desirably remains unattached to the respective waist section.” Col. 9, lines 21-23. As a result, a pocket is formed that “is particularly well suited for containing fecal material.” Col. 9, lines 24-25.

With respect to independent claims 1, 29, 43, 53, and 56, Sauer fails to disclose a back guard that “extend[s] vertically... to a middle back area of a user.” It is commonly understood that the term “small of the back” used in Sauer refers to the portion of the lower back that is typically contacted by the prior art incontinence articles, i.e., that portion of the back that is vertically aligned with the waist of the wearer. In sharp contrast, Applicants claimed back guard

extends to a middle back area of a user. As discussed above, it is commonly understood that “middle back” refers to an area of the back above the waist of the wearer.

With respect to independent claims 14, 22, 30, and 60, Sauer fails to disclose a back guard that extends above the rear portion and the front portion when the article is worn by a user. As discussed previously, the Office cites central zone 62, side zone 66, and/or side zone 64 as allegedly disclosing the back guard of the claimed invention. However, as can clearly be seen in Figs. 1 and 4 of Sauer, none of the elements 62, 64, or 66 extends above the rear portion or the front portion when the article is worn by a user. In sharp contrast, Figs. 2-8, and 12-13 of the application clearly depict the back guard extending above both the rear portion and the front portion of the article when the article is worn by a user.

The various dependent claims are patentable for these reasons as well as for their own patentable features. As a result, Applicants respectfully request withdrawal of this rejection.

II. REJECTION OF CLAIMS 8, 17, AND 25 UNDER 35 U.S.C. § 103(a)

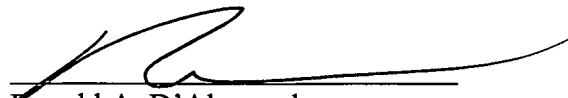
In the Office Action, claims 8, 17, and 25 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Sauer. Applicants herein incorporate the arguments presented above with respect to independent claims 1, 14, and 22 from which these claims depend. In particular, since Sauer does not teach all the claim limitations of claims 1, 14, and 22, Sauer also fails to teach all the limitations of the dependent claims 8, 17, and 25. As a result, Applicants respectfully request withdrawal of this rejection.

III. CONCLUSION

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

Date: 4/30/03
Hoffman, Warnick & D'Alessandro LLC
Three E-Comm Square
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)



Ronald A. D'Alessandro
Reg. No.: 42,456